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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/212,857 12/17/98 MOURA E 18

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WASHINGTON DC 20036

LM01/0229

EXAMINER

HOM, S

ART UNIT	PAPER NUMBER
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2732

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DATE MAILED: 02/29/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/212,857

Applicant(s)

Mouva et al.

Examiner

S. Hom

Group Art Unit

2732

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 12-7-99.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-65 is/are pending in the application.
- Of the above claim(s) 1-21, 22-25 is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 26-65 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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Response to Arguments

1. Applicant's arguments filed 12-7-99 and 2-16-2000 have been fully considered but they are not persuasive.

The Terminal Disclaimer is not proper and has not been accepted because the serial number of the patent which forms the basis for the double patenting rejection is incorrect.

(See 14.32).

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 26-65 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 5,946,322.

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Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 13 of U.S. Patent No. 5,946,322 which recite a high speed downstream channel and a lower speed upstream channel for distributing data packets between a server and remote clients clearly anticipate the two way asymmetric network communication system for transferring data between a server and remote devices for supporting server-client communication as now claimed. Further, claim 13 recite the upstream and downstream channels lies in a communication medium selected from one of a CATV distribution network or over-the-air wireless network or direct broadcast satellite communication network as now claimed; claim 13 recite the network manager for issuing credit control packets indicative of respective volumes of data the remote clients are respectively authorized to send clearly anticipate the control system acting to generate a signal that determines an amount the remote may send during a certain period, claims 3 and 5 which recite the step of sending a message to the second node indicative of the amount of information remaining to be sent and returning the credit to the second node when the first node has no information to transfer clearly anticipate the sender that sends data from the remote device over the upstream channel, an amount of sent data being governed by the respective signal as in claims 26-65.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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5. **Any response to this final action should be mailed to:**

Box AF

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 305-9051, (for formal communications; please
mark "EXPEDITED PROCEDURE")

Or:

(703) 308-5403, (for informal or draft
communications, please label "PROPOSED" or
"DRAFT")

Hand-delivered responses should be brought to Crystal
Park II, 2021 Crystal Drive, Arlington. VA., Sixth
Floor (Receptionist).

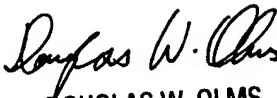
Any inquiry concerning this communication or earlier
communications from the examiner should be directed to Shick Hom
whose telephone number is (703) 305-4742.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4750.


DOUGLAS W. OLMS
SUPERVISORY PATENT EXAMINER
GROUP 2700

SH

February 27, 2000